Remarks

Claims 1-11 were pending in this application, with claims 9-11 withdrawn as being drawn to non-elected inventions. Claims 9-11 are canceled herein; therefore **claims 1-8** are currently pending in this application. Claims 1 and 6 are amended herein. No new matter is introduced by these amendments. Consideration and allowance of the pending claims is requested.

Applicants thank the Examiner for considering the Information Disclosure Statements (IDS) filed on July 3, 2006, July 27, 2006, and April 4, 2007. Applicants note that the reference cited under "Other Documents" in the IDS submitted on July 3, 2006 (Database UniProt, 1 November 1997, XP-002354136, Accession No. Q42560, 3 pages) was not considered. A copy of the partially signed Form 1449 is provided herewith. Applicants respectfully request the Examiner's consideration of this reference.

Claim Rejection – 35 U.S.C. § 112, second paragraph

Claims 1-8 are rejected under 35 U.S.C. § 112, second paragraph as allegedly indefinite for failing to particularly point out and distinctly claim the subject matter which Applicants regard as the invention. Applicants respectfully traverse.

The Office action alleges that the recitation of "high oil phenotype relative to control plants" and "altered oil content phenotype relative to control plants" is indefinite as it is allegedly unclear what is encompassed by the term "control plant." Applicants assert that the term "control plant" is clear and definite to one of skill in the art. However, solely to expedite prosecution, claims 1 and 6 are amended herein to recite "a non-transgenic control plant." Support for this amendment may be found in the specification at least at page 5, lines 14-18 and page 17, line 34 to page 18, line 1. Applicants request that the rejection under 35 U.S.C. § 112, second paragraph be withdrawn.

Claim Rejection – 35 U.S.C. § 103

Claims 1-8 are rejected under 35 U.S.C. § 103(a) as allegedly unpatentable over Li *et al.* (US 2002/0078475) in light of Peyret *et al.* (WO 95/20046). To the extent that this rejection is maintained with respect to the amended claims, Applicants traverse.

Claim 1 is amended herein to recite a transgenic plant "comprising a plant transformation vector comprising a nucleotide sequence that encodes an aconitase polypeptide comprising the amino acid sequence of SEQ ID NO:2, or an ortholog thereof, wherein the transgenic plant over-expresses the aconitase polypeptide or the ortholog relative to a non-transgenic control plant…" Claim 6 is amended herein to recite "wherein said nucleotide sequence is over-expressed relative to a non-transgenic control plant, and said transgenic plant exhibits a high oil content phenotype…" Claims 1 and 6 are also amended herein to delete reference to a sequence that is "complementary to a sequence that encodes" an aconitase polypeptide. Support for these amendments may be found in the specification, at least at page 4, lines 26-29; page 5, lines 14-18; page 6, lines 23-25; and Example 1, pages 17-18.

Li *et al.* teach methods for optimizing oil production in a plant by increasing or decreasing the level of an acyl-CoA thioesterase in peroxisomes. Li *et al.* further teach methods for optimizing oil production in a plant by decreasing the level or activity of a protein which affects β-oxidation directly or indirectly (paragraph [0008]). The methods are further described as "decreasing β-oxidation by modulating acyl-CoA thioesterase expression…and additionally decreasing the level or activity of at least one additional protein…" (paragraph [0024], emphasis added). Aconitase is listed as one of the other proteins that may be **decreased** in order to affect β-oxidation (paragraph [0025]). Li *et al.* clearly teach away from increasing the level or activity of aconitase in order to increase oil production by a plant. Based on Li *et al.*, one of skill in the art would expect that decreasing the level of aconitase would lead to increased oil production by a plant. Li *et al.* would not lead one of skill in the art to expect that increasing the level of aconitase would lead to increased oil content. Therefore, one of skill in the art would not be motivated to combine the method of Li *et al.* with the sequence described in Peyret *et al.* to over-express aconitase in order to produce a plant with a high oil phenotype, as claimed.

Based on the foregoing, Applicants request that the rejection under 35 U.S.C. § 103(a) be withdrawn.

Conclusion

Applicants respectfully submit that the claims are now in condition for allowance. If any issues remain, the Examiner is requested to contact the undersigned to arrange a telephonic interview prior to the preparation of any further written action.

Respectfully submitted,

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